IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

WP(C).No. 5755 of 2005(I)

AGAINST THE ORDER IN EP 24 2002 IN
OS.329/1997 of MUNSIFF COURT, PEERUMEDU

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PETITIONERS:

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1. SASIDHARAN, KANISSERYIL HOUSE,
   NARAGAKUZHI KARA, VAGAMON VILLAGE,
   PEERUMEDU TALUK.

2. UMMANANDAN, VALLIYIL HOUSE,
   NARAGAKUZHI KARA, VAGAMON VILLAGE,
   PEERUMEDU TALUK.

BY ADV. SRI.P.K.MUHAMMED

RESPONDENT:

RAVI, S/O.NARAYANAN,
MANDALAM KUNNATHU HOUSE,
NARAGAKUZHI KARA, KOTTAMALA P.O.,
VAGAMON VILLAGE, PEERUMEDU TALUK.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 5755/05)

PETITIONERS' EXTS.:

EXT.P1: TRUE COPY OF E.A.11/05 FILED BEFORE THE MUNSIFF COURT, PEERUMEDU.

EXT.P2: TRUE COPY OF THE DECREE IN O.S.329/97 BEFORE THE MUNSIFF'S COURT, PEERUMEDU.

EXT.P3: TRUE COPY OF THE EXECUTION PETITION NO.24/02 BEFORE THE MUNSIFF COURT, PEERUMEDE.

EXT.P4: TRUE COPY OF THE ORDER IN E.P.24/02 DATED 27.6.03 OF MUNSIFF COURT, PEERUMEDU.

EXT.P5: TRUE COPY OF THE REPORT FILED BY AMEEN IN E.P.24/02 DATED 17.1.2005 BEFORE THE MUNSIFF COURT, PEERUMEDU.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.5755 of 2005

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Dated: 15th June, 2007

JUDGMENT

The grievance of the petitioners is that the execution court has ordered warrant against them in execution of a decree for prohibitory injunction on the basis that they have violated the decree.

2. Even though several attempts were made to take effect service on the respondent, the respondent decree-holder has not been served with notice. As directed by me copy of the Writ Petition was sent to the Advocate who appeared for the respondent before the court below by registered post with acknowledgment card. Even then there is no appearance for the respondent.

3. Mr.P.K.Muhammed, learned counsel for the petitioners submits that the petitioners are not parties to the decree. A perusal of the copies of the decree and the execution petition will clearly show that the petitioners are not parties to the decree. In fact the order of arrest seems to have been passed upon E.A.No.11/05 which was later filed by the respondent-decree-holder alleging that the petitioners along with one K.K.Viswanathan are the stooges of the judgment-debtors and that they have assisted the judgment-debtors in the matter of violating the decree. Mr.Muhammed submits that the

petitioners came to have any information about the pendency of proceedings only when they were attempted to be arrested on the basis of the orders passed in E.A.11/05. In other words, the submission is that orders was passed in E.A.11/05 without hearing the petitioners. I notice merit in the above contention. Accordingly, the order of arrest passed against the petitioners on the basis of E.A.11/05 in E.P.24/02 in O.S.No.329/97 on the files of the Munsiff's court, Peermade is set aside. The learned Munsiff is directed to issue notice to the petitioners, hear them and also the decree-holder and pass fresh orders in E.A.11/05 at his earliest and at any rate within four months of receiving copy of the judgment.

The Writ Petition is allowed as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**